Tuan Mat bin Tuan Lonik v Public Prosecutor

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO D-09–31 OF 2005
SURIYADI, WAN ADNAN MUHAMAD AND AHMAD MAAROP JJCA
26 NOVEMBER 2008

Criminal Procedure — Sentence — Caning — Accused imposed with total of 50 strokes — Whether sentence contravened s 288(5) of the Criminal Procedure Code — Whether sentence futile considering age of accused and duration of sentence of imprisonment

Criminal Procedure — Sentencing — Concurrent or consecutive — Whether nature of offence warranted consecutive sentence — Whether sentence meant to hinder recurrence of offence — Whether public interest outweighed all mitigating factors

The appellant was the stepfather of the victim. The victim was 12 years old when the appellant first raped her. The appellant further committed the offence on four other occasions. The appellant's acts of raping the victim were exposed when the victim delivered a baby at a hospital. The appellant subsequently, was charged in the sessions court for five offences of rape punishable under s 376B of the Penal Code ('the Code') in three separate cases. All the five charges were heard together. The appellant pleaded guilty to all the five charges, and upon conviction was sentenced to 15 years imprisonment and 10 strokes of the rotan for each offences. Each sentence was to run consecutively from the date of arrest. Subsequently, the appellant appealed to the High Court, which was dismissed, with affirmation of the sentences of the sessions court. The learned judge opined that despite the appellant's guilty plea, but due to the nature of the offence, no amount of mitigating factors could override public interest. The appellant hence, appealed against the sentences.

Held, allowing the appeal:

(1) Section 282(d) of the Criminal Procedure Code ('CPC') empowers the judge with the necessary discretion when a sentence should begin. Further, a rule has also evolved whereby when the offences piled against

an accused person are distinct offences, let alone that they do not emanate from the same transaction, the imprisonment sentences would invariably run consecutively. The purpose the sentence of the second charge to run consecutively with the first charge was to discourage the type of criminal conduct, reflect the overall seriousness of the behaviour and the need to protect females. If the sentence of the second charge were not ordered to run consecutively with the first charge, the appellant in no time would be back on the street, not only free to terrorise his family members but also exact revenge on the wife who lodged the police report against the appellant (see paras 22–23).

(2) On the facts, the sentences of the first and second charges were to run consecutively and the sentences of the third, fourth and fifth charges were to run concurrently with the sentence of the second charge. Thus, factually reducing the length of time of the appellant's incarceration to 30 years, and with deductions for good behaviour, the appellant would be about 70 years of age when he is released from incarceration. Even if the appellant lives at the age of 70 years, the likelihood of him besetting and causing trauma to anyone was slim. The orders not only had considered public interest but also made the sentence sensible and fair (see paras 24–25).

(3) The learned High Court judge had erred in affiming the imposition of 50 strokes of the rotan for the five charges handed down by the trial court as the combined sentences of whipping had contravened s 288(5) of the CPC (see paras 26).

(4) A conviction of any two or more distinct offences, and any two or more of which are legally punishable by whipping, the combined sentences of whipping shall not exceed a total number of 24 strokes in the case of adults. The probability of the 24 strokes of rotan being executed to completion against the appellant is next to impossible as the appellant's age was 48 and the first charge would take 15 years to exhaust, the maximum strokes that he will endure would only be four strokes. Hence, upon the appellant attaining the age of 50 in two years, no sentence of whipping shall be executed despite the imposition of 24 strokes of rotan against the appellant in adherence to s 289 of the CPC. Despite the futility of the imposition of the 24 strokes of rotan, and regardless of it, the orders were primarily to ensure that the right message was transmitted to younger offenders who may not be saved by age (see paras 27–28)

[Bahasa Malaysia summary

Perayu merupakan bapa tiri mangsa. Mangsa berumur 12 tahun ketika kali pertama perayu merogolnya. Perayu melakukan jenayah tersebut sebanyak

empat kali lagi. Perbuatan perayu merogol mangsa terdedah apabila mangsa melahirkan seorang bayi di hospital. Seterusnya, perayu dituduh di mahkamah sesyen atas lima kesalahan merogol yang boleh dihukum di bawah s 376B Kanun Keseksaan (Kanun tersebut) dalam tiga kes yang berlainan. Kelima-lima pertuduhan didengar bersama. Perayu mengaku bersalah atas kesemua pertuduhan tersebut, dan atas sabitan, perayu dihukum 15 tahun penjara dan 10 sebatan bagi setiap kesalahan. Setiap hukuman dilaksanakan berturut-turut dari tarikh penangkapan. Perayu kemudian merayu ke Mahkamah Tinggi, yang mana ditolak, dengan pengesahan hukuman-hukuman mahkamah sesyen. Hakim yang bijaksana berpendapat bahawa walaupun perayu mengaku salah, melihat kepada sifat jenayah tersebut, tiada sebarang sebab peringanan hukuman boleh mengatasi kepentingan umum. Maka perayu merayu terhadap hukuman-hukuman tersebut.

Diputuskan, membenarkan rayuan:

(1) Seksyen 282(d) Kanun Prosedur Jenayah (KPJ) memberi kuasa budi bicara yang perlu kepada hakim tentang bila hukuman seharusnya bermula. Selanjutnya, satu peraturan telah berkembang iaitu apabila kesalahan-kesalahan yang tertindan atas seorang tertuduh merupakan kesalahan yang berlainan, lebih-lebih lagi kesalahan itu tidak terbit daripada satu transaksi, hukuman penjara akan dilaksanakan berturut-turut. Tujuan hukuman pertuduhan kedua dilaksanakan berturut-turut dengan pertuduhan pertama adalah untuk mengekang kelakuan jenayah tersebut, mencerminkan betapa seriusnya tingkah laku itu dan keperluan melindungi wanita. Jika hukuman pertuduhan kedua tidak diperintah dilaksanakan secara berturut-turut dengan pertuduhan pertama, perayu tentu akan kembali bebas dalam sekelip mata, bukan sahaja bebas untuk menakut-nakutkan ahli keluarganya, malah bebas membalas dendam terhadap isterinya yang membuat laporan polis terhadapnya (lihat perenggan 22–23).

(2) Melalui fakta-fakta, hukuman-hukuman pertuduhan pertama dan kedua dilaksanakan secara berturut-turut dan hukuman-hukuman pertuduhan-pertuduhan ketiga, keempat dan kelima dilaksanakan serentak dengan hukuman pertuduhan kedua. Oleh itu, secara faktanya, mengurangkan pemenjaraan perayu selama 30 tahun, dan jika berkelakuan baik, perayu akan berumur 70 tahun semasa dibebaskan daripada pemenjaraan. Walaupun jika perayu hidup sehingga umurnya 70 tahun, kemungkinan dia menyerang dan mengakibatkan trauma terhadap seseorang adalah tipis. Perintah tersebut bukan hanya mengambilkira kepentingan umum malah hukuman tersebut adalah berpatutan dan adil (lihat perenggan 24–25).

(3) Hakim Mahkamah Tinggi yang bijaksana khilaf apabila mengesahkan 50 sebatan rotan atas kelima-lima pertuduhan yang diperintah oleh hakim perbicaraan kerana penggabungan hukuman-hukuman sebatan menyalahi s 288(5) KPJ (lihat perenggan 26).

(4) Penyabitan bagi dua atau lebih kesalahan-kesalahan yang berbeza, dan dua atau lebih kesalahan-kesalahan yang boleh dihukum dengan sebatan, penggabungan hukuman-hukuman sebatan tidak seharusnya melebihi 24 kali sebatan dalam kes orang dewasa. Kemungkinan 24 kali sebatan dilaksanakan dengan sempurnanya terhadap perayu sama sekali tidak mungkin kerana perayu berumur 48 tahun dan pertuduhan pertama mengambil masa 15 tahun untuk disempurnakan, jumlah maksima sebatan yang boleh ditanggung hanya empat sebatan. Maka, apabila perayu mencecah 50 tahun dalam masa dua tahun, tiada hukuman sebatan akan dilaksanakan meskipun hukuman 24 sebatan dijatuhkan terhadap perayu berikutan dengan s 289 KPJ. Meskipun hukuman 24 sebatan itu sia-sia, tujuan utama perintah tersebut adalah untuk memastikan mesej yang betul disampaikan kepada pesalah-pesalah yang lebih muda yang mungkin tidak akan diselamatkan oleh faktor umur (lihat perenggan 27–28).]

Notes

For cases on canning, see 5(2) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 3422–3426.

For cases on concurrent or consecutive sentence, see 5(2) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 4208–4209.

Cases referred to

Datuk Haji Harun bin Haji Idris & Ors v PP [1978] 1 MLJ 240, FC (refd)
Lee Chow Meng v PP [1976] 1 MLJ 287, HC (refd)
Melvani v PP [1971] 1 MLJ 137, HC (refd)
New Tuck Shen v PP [1982] 1 MLJ 27, HC (refd)
Philip Lau Chee Heng v PP [1988] 3 MLJ 107, HC (refd)
PP v Chung Kwong Huah [1981] 1 MLJ 316, HC (refd)
PP v Dato' Nallakaruppan Solaimalai [1999] MLJU 74; [1999] 2 CLJ 596, HC (refd)
PP v Govindnan a/l Chinden Nair [1998] 2 MLJ 181, HC (refd)
PP v Jafa bin Daud [1981] 1 MLJ 315, HC (refd)
PP v Ravindran & Ors [1993] 1 MLJ 45, HC (refd)
PP v Sulaiman bin Ahmad [1993] 1 MLJ 74, HC (refd)
PP v Teh Ah Cheng [1976] 2 MLJ 186, HC (refd)
PP v Tia Ah Leng [2000] 5 MLJ 401, HC (refd)
PP v Yap Huat Heng [1985] 2 MLJ 414; [1986] CLJ (Rep) 645, HC (refd)
R v Faulkner (1972) 56 Cr App R 594, CA (refd)
R v Vaitos (1981) 4 A Crim R 301 (refd)

Re Chang Cheng Hoe & Ors [1966] 2 MLJ 252, HC (refd)
Rex v Kenneth John Ball (1951) 35 Cr App R 164, CA (refd)
Sau Soo Kim v PP [1975] 2 MLJ 134, FC (refd)
Tan Bok Yeng v PP [1972] 1 MLJ 214, HC (refd)

Legislation referred to
Criminal Procedure Code ss 173(b), 173(m)(ii), 282(d), 288(5), 289
Penal Code ss 376, 376B, 376B(b), 379, 392, 397

Appeal from: Criminal Trial Nos 42–22 of 2004, 42–23 of 2004 and 42–24 of 2004 (High Court, Kota Bharu).

Appellant in person.
Shoba Venu Gobal (Duputy Public Presecutor, Attorney General's Chambers) for the respondent.

Suriyadi JCA (delivering judgment of the court):

[1] The appellant in this case was charged at the sessions court for five offences of rape punishable under s 376B of the Penal Code in three separate cases. Three charges were registered in Case No 62–63 of 2004 and they were as follows:

(1) Rape punishable under s 376B of the Penal Code, committed in June 2000, at about 2am in an unnumbered house at Kg Sungai Mengkuang, Manek Urai in Daerah Kuala Krai, Kelantan on one Norazian binti Hussain (Identity Card 890411–03–6364) then aged 12 years 2 months old;

(2) Rape punishable under s 376B of the Penal Code, committed in August 2001 at about 2am at the same place, on the same victim then aged 12 years 4 months old; and

(3) Rape punishable under s 376B of the Penal Code, committed in March 2002, at about 5am at the same place, on the same victim then aged 12 years 11 months old.

[2] Another charge was filed in case 62–64 of 2004, also rape punishable under s 376B of the Penal Code committed in June 2002, at about 11pm, at the same place, on the same victim then aged 13 years 2 months old as in the above charges. The fifth charge, in Case No 62–65 of 2004 likewise was rape also punishable under s 376B of the Penal Code, committed on 1 November 2003, at about 12 midnight at the same place, on the same victim then aged 14 years 7 months old. All the five charges were heard together.

[3] The appellant pleaded guilty to all the five charges, and on conviction, was sentenced to 15 years imprisonment and 10 strokes of the rotan for each and every offence. Each sentence was to run consecutively from the date of arrest. In a nutshell he would have to serve 75 years in jail and also receive a total of 50 strokes of the rotan. At the time when the appeal came before us he was about 48 years old, and if he were to serve the full 75 years, he would be 123 years of age when released.

[4] Dissatisfied with the orders of the subordinate court, the accused had filed an appeal at the High Court but was dismissed on 5 May 2005, with the sentences of the sessions court accordingly affirmed. The appellant then filed the appeal against sentence at the Court of Appeal hence the matter before us. This panel allowed the appeal. We now discuss the background facts of the case.

BACKGROUND FACTS OF THE CASE

[5] The appellant is the step-father of the victim. His acts of raping the victim came to light only when she delivered a baby boy at a hospital on 22 July 2004. The victim's mother promptly lodged a police report of the rape incidents and on 28 July 2004 the appellant was arrested. Investigations revealed that the victim had been raped by the accused since year 2001 when she was only 12 years old. She was last raped in November 2003 when she was 14 years 7 months old. The question of consensual defence did not arise here as at the time of the rape incidents she never passed the age barrier of 16 years (s 376B(b) of the Penal Code).

[6] At the sessions court after the plea of guilt, and also before the High Court judge, the appellant had pleaded for leniency, and ventilated regrets for what he had done. He pleaded that he had a family comprising seven children of whom five were his own and two being step children. The eldest child is 17 years old and the youngest nine months old. He ventilated that he supported his parents by sending RM50 to them every month. At the High Court he also pleaded that the sentences run concurrently.

[7] The prosecution's stance was simple and straightforward. Offences of incest on a child below the age of 16 had taken place, and the imprisonment demanded should not be less than 18 years and 10 strokes for each offence, with the sentences to run consecutively. This sentence would adequately teach the appellant a lesson, and simultaneously transmit the message to the public at large, of the heinousness of the offence. The fact that the victim is the step daughter of the appellant and had given birth to a child was strenuously highlighted by the respondent.

[8] The learned High Court judge found that the punishment imposed by the sessions court was not excessive and indeed did commensurate with the seriousness of the offences. The learned judge opined that in these types of offences despite the appellant having pleaded guilty, no amount of mitigating factors could override public interest. The appellant had failed his family, when instead of protecting his step-daughter, had instead taken advantage of her frailty. The learned judge too held the view that the sessions court judge had jurisdiction to ascertain when the sentence should start as provided for under s 282(d) of the Criminal Procedure Code.

[9] Despite the strength of the prosecution's case and the reasoning of the learned judge we allowed the appeal and accordingly varied the sentences. Our orders are as follows:

(1) the appellant is to be imprisoned for 15 years for every offence;

(2) the imprisonment sentence of the second charge is to run consecutively to the first charge;

(3) the sentences of the third, fourth and fifth charges are to run concurrently with the sentence of the second charge;

(4) the appellant is to receive four strokes of the rotan for the first offence; and

(5) five strokes of the rotan for charges 2, 3, 4 and 5 respectively.

[10] The total effect is that the appellant will now serve a 30 year jail term and to receive 24 strokes of the rotan altogether.

WHY THE CRUSHING SENTENCE?

[11] Sentence is the last stage of a judicial process in a criminal case, and will inevitably take place at the end of a full blown trial or after a plea of guilt has been recorded. In both situations prior to the sentencing process a conviction must be recorded first. Punishments may vary due to the desire of arriving at different objectives, and en route to choosing that punishment, the court must weigh the interest of the public and that of the prisoner. Unfortunately many a time, the concept of public interest may take a twisted meaning, and be equated with public opinion. When public opinion takes the front seat then the demand for retribution takes prominence, resulting sometimes in inappropriate or even void sentences.

[12] Before applying the principles of sentencing in relation to the facts before us, let us peruse some of the relevant statutory provisions in the Criminal Procedure Code. Under s 173(b) of the Criminal Procedure Code,

if the accused pleads guilty to the charge, the court shall pass sentence according to law. Also under s 173(m)(ii) of the Criminal Procedure Code, it is provided for that if the court finds the accused guilty, after the prosecution has proven its case beyond reasonable doubt, the court shall pass sentence according to law (*Re Chang Cheng Hoe & Ors* [1966] 2 MLJ 252; *Public Prosecutor v Jafa bin Daud* [1981] 1 MLJ 315; *Philip Lau Chee Heng v Public Prosecutor* [1988] 3 MLJ 107; *Public Prosecutor v Tia Ah Leng* [2000] 5 MLJ 401).

[13] When this panel imposed the above sentences, we had to consider several factors but due to the factual matrix of the case, the factor of public interest was uppermost in our mind. Public interest varies with place, time and circumstances of each case including the age of the offender and the prevalence of the offence. A certain type of sentence may not satisfy public interest at another place (*New Tuck Shen v Public Prosecutor* [1982] 1 MLJ 27). The sentence must be deterrent enough, in that the prisoner will realise crime does not pay, with the punishment being debilitating to his freedom. Not only will would be offenders be deterred from trying but so will it deter repeat offenders (*Rex v Kenneth John Ball* (1951) 35 Cr App R 164).

[14] The concept of retribution akin to 'tooth for a tooth', normally takes front stage if the offence is considered an offence against a member of the public, especially here when a step-daughter has been raped repeatedly since of tender age. Due to the special relationship here between the victim and the appellant, let alone the rape incidents were repeatedly carried out until an illegitimate child was born, the demand to satisfy society's needs to avenge the wrongful act of the appellant must take centre stage.

[15] For purposes of analogy, when reflecting on the abhorrence of firearms, in *Public Prosecutor v Chung Kwong Huah* [1981] 1 MLJ 316 Chan J when referring to *Lee Chow Meng v Public Prosecutor* [1976] 1 MLJ 287 and *Public Prosecutor v Teh Ah Cheng* [1976] 2 MLJ 186 had occasion to say:

> As for retribution, the time has come for the courts to show their abhorrence of offences involving the possession and use of firearms. Something has to be done to curb the unlawful possession and use of such weapons before the situation gets out of hand … The public is entitled to be protected and it is not likely to be so protected if lenient sentences are passed.

[16] Likewise it was also timely that we show our abhorrence of incestuous rape and impose the appropriate sentence in the circumstances of the case. Despite the above supplied facts and prognosis, this panel did not go overboard by ignoring the law or even rationality, and impose impossible sentences. We had occasion to remark in open court that judges should not

A be blinded by emotion and react emotionally as the law is not as evil as the appellant. In the circumstances of the case, anything less than 30 years in jail would not suffice to qualify as retributive, hence that span of time ordered against the appellant.

B **[17]** Apart from being convinced of the need of retribution, the factor of deterrence cannot lag very far behind, its purpose ostensibly to ensure that an offender does not repeat that offence. Indirectly a message is transmitted to potential offenders of what will be in store for them if they cross the line. In *R v Ball* (1951) 35 Cr App R 164, Hilbery J had remarked:

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> A proper sentence passed … serves the public interest in two ways. It may deter others who might be tempted to try crime as seeming to offer easy money on the supposition, that if the offender is caught and brought to justice, the punishment will be negligible. Such a sentence may also deter the particular criminal from committing a crime again or induce him to turn from a criminal to honest life …

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[18] In *Tan Bok Yeng v Public Prosecutor* [1972] 1 MLJ 214, Sharma J had occasion to state:

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> It is not merely the correction of the offender which is the prime object of punishment. The considerations of public interest have also to be borne in mind. In certain types of offences a sentence has got to be deterrent so that others who are like-minded may be restrained from becoming a menace to society. (Emphasis added.)

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[19] In the circumstances of the case, a lenient sentence, or reformative sentences may not be suitable.

G **[20]** The appellant here had pleaded guilty to all the despicable offences committed during those years, when the step-daughter was his ward. Even though a plea of guilt is a mitigating factor, and some credit or discount is normally given, not all pleas of guilt may be accorded that privilege. A court has the discretion not to entertain such discounts (*Sau Soo Kim v Public Prosecutor* [1975] 2 MLJ 134; *Melvani v Public Prosecutor* [1971] 1 MLJ 137; H *Public Prosecutor v Sulaiman bin Ahmad* [1993] 1 MLJ 74; *Public Prosecutor v Ravindran & Ors* [1993] 1 MLJ 45). It is widely known that incest statistically appears to be on the rise, with the victim getting younger by the day, as reported daily by the local media. And no amount of consensual defence will be accepted, be it on ground of religion, morality, or law. With I the facts as they were, let alone public interest demands a retributive and deterrent sentence, discounts are not appropriate here (*Public Prosecutor v Govindnan a/l Chinden Nair* [1998] 2 MLJ 181; *Public Prosecutor v Dato' Nallakaruppan Solaimalai* [1999] MLJU 74; [1999] 2 CLJ 596).

[21] The appellant is the authority in the household, and every member of the family would inevitably look up to him, not only for guidance, but also protection. Unfortunately the trust was betrayed when he took advantage of his power of strength by regularly forcing himself on the victim. In *Datuk Haji Harun bin Haji Idris & Ors v Public Prosecutor* [1978] 1 MLJ 240 the status of the prisoner was taken into account when the former Menteri Besar of Selangor, who had been convicted of the offences of forgery and conspiracy to commit criminal breach of trust, was treated to a more severe sentence. When imposing a higher sentence against the former Menteri Besar as compared to the co-accused, Wan Suleiman FJ had stated:

> We are of the opinion that he was the principal actor in this drama. But for him and his support for the big fight, these crimes might not have been committed and his co-accused who look up to him and were loyal to him might not have got into trouble … in view of … the need for people in public life to show a good example to those below them and of the serious breach of trust placed in him by the members of the bank who were poor people from rural areas who have a right to expect their leaders not to touch a penny of money entrusted to his care, we are of the opinion that this appellant should serve a longer period in prison than the second…

WHY MUST THE SENTENCE OF THE SECOND CHARGE RUN CONSECUTIVELY WITH THE FIRST CHARGE?

[22] Under s 282(d) of the Criminal Procedure Code it is provided that 'every sentence of imprisonment shall take effect from the date on which the same was passed unless the court passing such sentence otherwise directs'. The Criminal Procedure Code thus empowers the judge with the necessary discretion when a sentence should begin. Apart from the statutory provision, a rule has evolved whereby when the offences piled against an accused person are distinct offences, let alone that they do not emanate from the same transaction, the imprisonment sentences will invariably run consecutively. The purpose of it to run consecutively here is to discourage the type of criminal conduct, reflect the overall seriousness of the behavior, and the need to protect females (*R v Faulkner* (1972) 56 Cr App R 594; *Emmins on Sentencing* (2nd Ed) p 151; *R v Vaitos* (1981) 4 A Crim R 301). In *Public Prosecutor v Yap Huat Heng* [1985] 2 MLJ 414; [1986] CLJ (Rep) 645 the respondent was charged in the sessions court with two offences punishable under s 376 of the Penal Code and another two offences punishable under s 392 read with s 397 of the Penal Code. He pleaded guilty to all four charges and was sentenced to three years' imprisonment on each charge but the sentences were ordered to run concurrently. The public prosecutor successfully appealed against this sentence and order. The court when allowing the appeal and when discussing the issue of when a sentence ought to begin stated:

Where two or more distinct offences had been committed, sentences of imprisonment should not be made to run concurrently. It should only be made concurrent when an offender had been convicted of a principal and a subsidiary offence. In all other cases sentences should be made to run consecutively.

[23] Here, where there is a need for each and every rape to be punished, let alone if the sentence of the second charge were not ordered to run consecutively with the first charge, the appellant in no time would be back on the street, not only free to terrorise his family members but also exact revenge on the wife who lodged the police report against him.

WHY ARE THE SENTENCES OF CHARGES THREE, FOUR AND FIVE TO RUN CONCURRENTLY WITH CHARGE 2 WHEN THEY ARE DISTINCT OFFENCES?

[24] An appellate court will not be overly ready to interfere with any sentence imposed by the trial court unless there are very good reasons to do so. For purposes of this case, suffice if we merely peruse the sentences meted down, subsequently to be affirmed by the High Court, from the point of view of logic. It is statistically accepted that the average life span of a Malaysian man is 70 years whilst that of a Malaysian woman 75 years. In time the average life span will increase. That being so, with the appellant now 48 years old, on average he has 22 years of good life left. To impose a sentence that will take him until the age of 123 years old, and knowing fully well that he never will serve the full term, not only is bisarre but strains the intelligence of the court. Any illogical sentence may attract unnecessary scrutiny and negative comments from the public on how we awkwardly conduct ourselves.

[25] With the sentences of the first and second charges to run consecutively, thus factually reducing the length of time of incarceration to 30 years, and with deductions thrown in for good behavior, by the time he is released he will be about 70 years of age ie the average life of a Malaysian man. Even if he lives to smell freedom at that age the likelihood of him besetting and causing trauma to anyone is slim. Our orders not only has taken public interest into account but also made the sentence sensible and fair.

WHY REDUCE THE NUMBER OF STROKES

[26] The learned judge had affirmed the 50 strokes of rotan for the five charges handed down by the trial court. Despite having correctly alluded to all the correct principles regarding the imposition of the rotan, a major error was detected when he had contravened s 288(5) of the Criminal Procedure Code. This provision provides:

When a person is convicted at one trial of any two or more distinct offences any two or more of which are legally punishable by whipping, the combined sentences of whipping awarded by the court for any such offences shall not, anything in any written law to the contrary notwithstanding, exceed a total number of twenty four strokes in the case of adults …

[27] In a gist after a conviction of any two or more distinct offences, any two or more of which are legally punishable by whipping, the combined sentences of whipping shall not exceed a total number of twenty four strokes in the case of adults. That would be the maximum number of strokes of the rotan on a convicted person to be imposed by a judge as empowered by the Criminal Procedure Code. With the law so clear this panel had no compunction in reducing the total number of strokes from 50 to 24 for the five charges.

[28] Despite the imposition of the above order by this panel, the probability of the 24 strokes of rotan being executed to completion is next to impossible. With the appellant's age being 48, and the first charge taking 15 years to exhaust, the maximum strokes that he will endure will only be 4 strokes. This is so as in two years time he will attain the age of 50. Under s 289 of the Criminal Procedure Code no sentence of whipping shall be executed on any male that the court considers to be more than 50 years of age. Despite being aware of the futility of the imposition of the 24 strokes, and regardless of it, our orders were primarily to ensure that the right message was transmitted, to all the interested parties especially to younger offenders who may not be saved by age.

[29] Based on all the above reasons we allowed the appeal. We varied the High Court order as we refused to submit to public opinion; public opinion is like the sword of Damocles that hover over the head of any trial judge, constantly intimidating the court to surrender to the unreasonable demands of the public.

Appeal allowed.

Reported by Mashrifah Ravendran